Supreme Court, U.S.
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NO. 96-306

IN THE
Supreme Court of the United States
OCTOBER TERM, 1995

Metropolitan Life Insurance Company,
Petitioner,
v.
ROBERTSON-CECO CORP.,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

PETITIONER'S REPLY BRIEF

BREWER & PRITCHARD, P.C.
Patrick E. Gaas
Counsel of Record
1111 Bagby, 24th Floor
Houston, TX 77002
(713) 659-1744
(713) 659-5302 (FAX)

Of Counsel

J. Mark Brewer
Brewer & Pritchard, P.C.
1111 Bagby St., 24th Fl.
Houston, TX 77002

Arthur R. Miller
1545 Massachusetts Ave.
Cambridge, MA 02138

Alpha Law Brief Company • Houston, Texas • (713) 981-9000 • 1-800-9001

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QUESTIONS PRESENTED

1. Did the majority below err in applying "reasonableness" factors above and beyond its finding that there were systematic and continuous contacts between the defendant and Vermont in concluding that the Vermont district court lacked *general* jurisdiction over the defendant under the Due Process Clause of the United States Constitution?

2. Is the decision of the majority below in conflict with the decision of other federal and state courts in defining the constitutional limits on *general* jurisdiction?

3. Did the majority below err in failing to use transfer of venue to ameliorate any concerns relating to the forum's fairness and litigation convenience rather than dismissal, once it determined that the defendant had constitutionally sufficient contacts with Vermont?

4. Did the majority below err in superimposing antiforum shopping concerns in addition to the constitutional limitations on the exercise of jurisdiction established by this Court?

PARTIES TO THE PROCEEDINGS

The original parties to this lawsuit included: (1) Metropolitan Life Insurance Company; (2) Robertson-Ceco Corp.; and (3) United Dominion Industries, Inc. Summary judgment was granted in favor of United Dominion on March 14, 1995. It was not a party to the appeal below, nor is it an interested party here.

There is no parent company of the petitioner. Petitioner's subsidiaries (other than wholly owned subsidiaries) are these:

Blodgett Holdings, Inc.
Briggs Holdings, Inc.
Briggs Plumbing Products, Inc.
Cicero/Cermak Corporation
Cloverleaf Properties, Inc.
Coating Technologies International, Inc.
Dan River, Inc.
Frialator International, Limited
Genesis Seguros Generales, Sociedad Anonima
De Seguros Y Reaseguros
GS Blodgett Corporation
GS Blodgett Inc.
GS Blodgett International LTD.
Kolon-Met Life Insurance Company
Magikitch'N, Inc.
Metropolitan Lloyds Insurance Company of Texas
Metropolitan Structures
Metropolitan Structures, Inc.
Metropolitan Structures West, Inc.
Morguard Investments Limited
MS Management Services, L.P.
Pitco Frialator, Inc.
Santander Met, S.A. (Mexico)

Seguros Genenis, S.A. (Spain)
State Street Research Portfolios, Inc.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

PARTIES TO THE PROCEEDING ii

TABLE OF AUTHORITIES v

REPLY TO OPPOSITION BRIEF 1

I. As Stated In *Burnham*, *International Shoe* Neither Rejected The Underlying Bases For Traditional Jurisdiction Theories, Nor Did It Add To Those Bases A Supervening Reasonableness Test . . . 1

II. Metlife Is Entitled To Proper Due Process Clause Interpretation 6

III. The Proper Treatment of Venue and Choice of Law Issues Becomes Relevant Only Because Of The Supervening Fairness / Reasonableness Inquiry. 6

CONCLUSION 9

TABLE OF AUTHORITIES

Cases — Page

Asahi Metal Indus. Co. v. Superior Court,
480 U.S. 102 (1987) 2

Burger King Corp. v. Rudzewicz,
471 U.S. 462 (1985) 7

Burnham v. Superior Court of California,
495 U.S. 604 (1990) 1, 2

Calder v. Jones
465 U.S. 733 (1984) 6

Helicopteros Nacionales de Columbia v. Hall,
466 U.S. 408 (1984) 5

International Shoe Co. v. Washington,
326 U.S. 310 (1945) 3

Keeton v. Hustler Magazine, Inc.,
465 U.S. 770 (1984) 6

Lafayette Insurance Co. v. French,
59 U.S. 404 (1855) 2

Missouri, K. & T. R. Co. v. Reynolds,
255 U.S. 565 (1921) 3

Perkins v. Benquet Mining Co.,
342 U.S. 437 (1952) 3

Philadelphia and Reading R.R. v. McKibbin, 243 U.S. 264 (1917) 2

Reyes v. Marine Management and Consulting, Ltd., 586 So.2d 103 (1991) 5

St. Louis S.W.R. Co. v. Alexander, 227 U.S. 228 (1913) 3

World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286 (1980) 4

Metropolitan Life Insurance Company respectfully submits this reply brief in support of its petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit in this case.

REPLY TO OPPOSITION BRIEF

I. As Stated In *Burnham*, *International Shoe* Neither Rejected The Underlying Bases For Traditional Jurisdiction Theories, Nor Did It Add To Those Bases A Supervening Reasonableness Test

Robertson-Ceco's assertion that *International Shoe* and subsequent cases have consistently and uniformly held that due process requires an independent fairness or reasonableness test, simply is untrue. That position is flatly contradicted by *Burnham v. Superior Court of California*, 495 U.S. 604 (1990), in which the Court held that the Due Process Clause permitted a California state court to exercise jurisdiction over a nonresident, who was personally served with process while temporarily in that State, in a suit unrelated to his activities in the State. Justice Scalia delivered an opinion in which Chief Justice Rehnquist, and Justice Kennedy concurred, and in which Justice White concurred in part. In his opinion, Scalia rejected outright the necessity of conducting an independent inquiry into the desirability or fairness of the prevailing in-state service rule. He relied instead on American jurisdiction tradition, and a number of pre- *International Shoe* cases upholding jurisdiction over nonresidents simply on the basis of physical presence in the State. Speaking of the in-state service rule, Justice Scalia remarked that "its validation is its pedigree, as the phrase '*traditional notions* of fair play and substantial justice makes clear.'" *Id.* at 621. The Justice warned against substituting other notions for our "traditional notions of fair play and substantial justice." *Id.* at 623. To hold otherwise, he said, would result in "a 'totality of the circumstances' test, guaranteeing what traditional territorial

rules of jurisdiction were designed precisely to avoid: uncertainty and litigation over the preliminary issue of the forum's competence." ***Id.*** at 626. Such a test is also unnecessary, said Justice Scalia, since physical presence is "the very ***baseline*** of reasonableness." ***Id.***, at 627.

Since ***Burnham*** addressed the propriety of the traditional imposition of jurisdiction only with respect to an individual personally served within the State, it is important that this Court clarify the extent to which its opinion gives continuing vitality to the traditionally recognized bases for jurisdiction over corporations. This is important since several traditional bases exist for jurisdiction over a corporation that do not involve a secondary reasonableness inquiry, such as that conducted by the majority below.[1] For instance, jurisdiction traditionally has been imposed on corporations on the basis of theories relative to "consent," "presence," and "doing business." ***See, e.g., Lafayette Insurance Co. v. French,*** 59 U.S. 404, 407 (1855); ***Philadelphia and Reading R.R. v. McKibbin***, 243 U.S. 264, 265 (1917). Robertson-Ceco was served through its registered agent in Vermont. Robertson-Ceco also conducted a substantial amount of business there, as acknowledged by the Second Circuit. Whether the Court of Appeals was justified in exercising what was in essence a secondary "totality of the circumstances" inquiry, notwithstanding Metlife's satisfaction of these other traditionally recognized bases of jurisdiction is a question that, if unanswered, will

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[1] Of particular significance in this context are the remarks of Justice Scalia that the evils accompanying a freestanding reasonableness inquiry, must be accepted, if at all, only when the Court "evaluates *non*traditional forms of jurisdiction newly adopted by the States." ***Burnham***, at 495, citing as an example ***Asahi Metal Industry Co. v. Superior Court of California, Solano County***, 480 U.S. 102 (1987).

cause much confusion in the area of personal jurisdiction.[2] This confusion is compounded by the lack of any clarity regarding the relationship between these traditional bases of jurisdiction and the concept of *general* jurisdiction based on "continuous and systematic contacts."

The existing authority suggests that, with respect to corporations, "continuous and systematic contacts" are the surrogate for physical presence in a *general* jurisdiction case. ***See, e.g., International Shoe Co. v. Washington*** 326 U.S. 310, 316 (1945) ("Since the corporate personality is a fiction, . . . it is clear that unlike an individual its 'presence' without . . . the state of its origin can be manifested only by activities carried on in its behalf . . . ."); ***Burnham***, at 610, n.1 ("It may be that whatever special rule exists permitting 'continuous and systematic' contacts, (citing ***Perkins v. Benguet***, 342 U.S. 437, 438 (1952)), to support jurisdiction with respect to matters unrelated to activity in the forum applies *only* to corporations, which have never fitted comfortably in a jurisdictional regime based primarily upon 'de facto power over the defendant's person.'"). As recognized in ***International Shoe,*** there have been cases that have recognized, without resort to a secondary reasonableness analysis, that a foreign corporation's continuous operations in a forum justified the imposition of jurisdiction against it on causes of action arising from dealings entirely distinct from those activities. ***Id.*** at 318,

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2

This confusion results in part because, although ***International Shoe*** recognized that "[d]ue process does not necessarily require the States to adhere to the unbending territorial limits on jurisdiction set forth in *Pennoyer*," ***Burnham***, at 618, it did not hold that the underlying bases for the traditional corporate fictions were no longer sufficient to establish jurisdiction. ***Id.***, at 619. This principle was neither recognized nor addressed by the majority below.

citing ***Missouri, K. & T. R. Co. v. Reynolds,*** 255 U.S. 565 (1921), and ***St. Louis S. W. R. Co. v. Alexander***, 227 U.S. 228 (1913), among other cases. Robertson-Ceco's continuous and systematic contacts with Vermont, outlined on pages 2 and 3 of Metlife's petition, accepted by the court below (App. 6a-7a)[3], and neither contested nor responded to in Robertson-Ceco's response to the petition, are at least the equivalent to presence, doing business, and indeed, corporate domicile. Guidance from this Court is needed as to whether these constitutionally sufficient "continuous and systematic contacts,"(App. 30a - 31a), furnish a similar *baseline* of reasonableness in a *general* jurisdiction case against a corporation as did an individual's physical presence in ***Burnham***, rendering unnecessary and inappropriate the independent reasonableness determination conducted below.

Robertson-Ceco's response, consisting largely of repetitive snippets (wrenched out of context) from *specific* jurisdiction cases, glosses over these concepts entirely and fails to even join issue with the petition. Although Robertson-Ceco refers to ***Perkins*** (for the observation that the issue of jurisdiction is "one of general fairness"), it avoids the fact that Benguet's continuous and systematic corporate activities, like Burnham's physical presence, made it fair and reasonable to impose jurisdiction over the defendant without further inquiry. Respondent refuses to acknowledge or otherwise deal with the fact that the multi-prong supervening reasonableness inquiry did not appear in this Court's jurisprudence until ***World-Wide Volkswagen v.***

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[3] Reference is made to the appendix accompanying the petition.

Woodson, 444 U.S. 286 (1980),[4] that the test is fundamentally and substantively distinct from the traditional concepts of reasonableness underlying our laws generally that the test has been employed only to defeat jurisdiction in a limited number of *specific* jurisdiction cases, and that the test never has been used to defeat *general* jurisdiction, when it otherwise would have existed. Peculiar also is Robertson-Ceco's stilted refusal to recognize the conflicts among the state and federal courts concerning the application of a supervening reasonableness inquiry in the *general* jurisdiction context, notwithstanding that this conflict has been expressly recognized by the Louisiana Supreme Court in ***Reyes v. Marine Management Consulting, Ltd.***, 586 So.2d 103 (1991), a case that Robertson-Ceco totally ignored.[5] Almost as if attempting to will away *general* jurisdiction by ignoring it, Robertson-Ceco also fails to address ***Helicopteros Nationales de Colombia, S.A. v. Hall***, 466 U.S. 408 (1984), which validated the dichotomy between general and specific jurisdiction cases.[6]

4

Robertson-Ceco's attribution of a bifurcated minimum contacts / reasonableness test to the opinion in ***International Shoe*** (response brief, p.7, n.5), is incorrect.

5

Robertson-Ceco's attempt to harmonize the Second Circuit's opinion in this case with Tenth Circuit *general* jurisdiction cases, by reference to three Tenth Circuit cases on *specific* jurisdiction, is unconvincing.

6

Ironically, Robertson-Ceco's cross petition acknowledges that contacts with the forum over time create a corporate presence. The cross-petition shows how important it is for the Court to speak once again on what it meant in ***Perkins*** and ***Helicopteros*** and what the relationship is of those cases to both the traditional bases of jurisdiction and *specific* jurisdiction.

Robertson-Ceco's failure to join issue is further proof that this case warrants certiorari. The confusion regarding the application of a secondary reasonableness inquiry in the *general* jurisdiction context is manifest, especially as applied to corporations. This case offers the Court an opportunity to complete the analysis it began in ***Burnham*** and restore order and predictability to the jurisdictional inquiry. The opportunity should be seized before the subject becomes further obscured by poorly reasoned opinions, like the one issued by the court below.

II. Metlife Is Entitled To Proper Due Process Clause Interpretation

One can only marvel at Robertson-Ceco's assertion that this court should not grant certiorari, because neither the District Court nor the Court of Appeals found jurisdiction to exist. Only with the sheerest unsupported speculation imaginable does Robertson-Ceco attempt to distinguish ***Keeton v. Hustler Magazine, Inc.*** 465 U.S. 770 (1984), in which, as in this case, neither the District Court nor the Court of Appeals found jurisdiction to exist. Moreover, Robertson-Ceco has entirely overlooked ***Perkins***, in which neither the trial court, the intermediate appellate court nor the Ohio Supreme Court found jurisdiction to exist.

This case presents the Court with basic questions concerning the application of the Fourteenth Amendment to the Constitution. Only this Court can answer them, and nothing turns on the fact that the courts below interpreted the Constitution to preclude the assertion of jurisdiction.

III. The Proper Treatment of Venue and Choice of Law Issues Becomes Relevant Only Because Of The Supervening Fairness / Reasonableness Inquiry

Contrary to the way respondent has re-formulated Metlife's assertions in its petition, Metlife has not advocated the injection of venue issues into the baseline jurisdictional analysis. To the contrary, as Metlife has discussed before, extraneous issues, even those as important as First Amendment factors, must not enter into the due process analysis. ***Calder v. Jones***, 465 U.S. 783 (1984). In this regard however, it is important to clarify that Metlife also has questioned the use of a supervening reasonableness inquiry in the *general* jurisdiction context. It is only in the event that such a test is determined to be proper in *general* jurisdiction cases, that a variety of procedural devices, including among others, transfer of venue, appear to become relevant as means of ameliorating litigation fairness and reasonableness concerns. ***Burger King Corp. v. Rudzewicz,*** 471 U.S. 462, 477 (1985). Justice Brennan's opinion reiterated this concept in ***Burnham***, at p.639, n. 13. Metlife has asked the Court to discuss the appropriate use, if any, of such procedural devises in a *general* jurisdiction case, such as this one, where the case was dismissed below on the basis of secondary fairness / reasonableness factors. In this regard, instruction is needed on whether litigation convenience concerns, as well as a forum's lack interest in the dispute, should be ameliorated, if possible, through the use of change of venue. This is only important, however, if these factors are determined to be germane to *general* jurisdiction analysis. Robertson-Ceco again did not join issue with the petition in that it did not address in a substantive fashion ***Burger King's*** admonishment concerning the use of procedural devises to ameliorate the fairness / reasonableness concerns and the effect of a change of venue on those

concerns. The Court of Appeals weighed these factors in favor of Robertson-Ceco following an analysis which did not take into account potential alternate forums.

Related to this issue is Robertson-Ceco's mis-statement of Metlife's assertions relative to choice of law considerations, such as those pertaining to statutes of limitation. Metlife's position in the District Court and in the Court of Appeals was simply that courts should not base the dismissal of a case for want of jurisdiction on the fact that the case may be barred by statutes of limitation in other forums.[7] Again, it is only because of the use of a supervening reasonableness inquiry in the *general* jurisdiction context by the court below, that Metlife has pointed to the confusion and inconsistency in the cases as to whether the analysis of whether a plaintiff has an interest in a forum, should take into account that the case may be barred in any other relevant jurisdiction. It seems fundamentally disingenuous to suggest that a plaintiff is lacking in interest under such circumstances. This Court can reconcile the apparent inconsistency of excluding choice of law considerations from the jurisdiction analysis, yet simultaneously including in that due process analysis plaintiff oriented interests (which may depend vitally, as in this case, on choice of law considerations). This Court has the opportunity to resolve this confusion by first determining whether a supervening reasonableness test is appropriate in *general* jurisdiction due process analysis and then whether that test should be determined in part on the basis of the plaintiff's interests.

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[7] The District Court openly reproached Metlife for selecting the *Vermont* forum because of its favorable statute of limitations (App. 45a), just as *Robertson-Ceco* has done in nearly every brief it has submitted on the jurisdiction issue.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

By:_____

BREWER & PRITCHARD, P.C.
Patrick E. Gaas
Counsel of Record
1111 Bagby, 24th Floor
Houston, TX 77002
(713) 659-1744
(713) 659-5302 (FAX)

Of Counsel

J. Mark Brewer
Brewer & Pritchard, P.C.
1111 Bagby St., 24th Fl.
Houston, TX 77002

Arthur R. Miller
1545 Massachusetts Ave.
Cambridge, MA 02138
(617) 495-4111